2504.

SUPREME COURT OF THE UNITED STATES.

No. 137.

PHINEAS O. FOSTER, ROGER A. HEIRNE AND GEORGE J. BLAKESLEE, OWNERS OF THE STEAMBOAT "SWAN," PLAINTIFFS IN ERROR,

vs.

GORHAM DAVENPORT AND AL., COMMISSIONERS OF PILOTAGE OF THE BAY AND HARBOR OF MOBILE, LIBELLANTS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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GIDEON, Print.

2508-

Be it remembered, that at a regular term of the supreme court of the State of Alabama, begun and held on the first day of June, A. D. 1857—present and presiding as judges of said court, Hon. Samuel F. Rice, chief justice, Hon. Abram J. Walker, associate justice, Hon. George W. Stone, associate justice—the following proceedings were had on the transcript of a record from the city court of Mobile, filed in the office of the clerk of said supreme court on the 5th day of March, A. D. 1857, which is in the words and figures following, to wit:

THE STATE OF ALABAMA,
Mobile County.

Pleas before the Honorable Alexander McKinstry, sole presiding judge of the city court of Mobile, at a term thereof begun and holden for admiralty business at the court-house of said county, on the third Monday of November, A. D. 1856.

Libel and Complaint.

THE STATE OF ALABAMA,
Mobile County, City Court of Mobile.

To the Honorable Alexander McKinstry, Judge of said Court:

Henry O. Brewer, Gorham Deavenport, Alexander W. Dearing, George Scheffelin, and Joshua S. Secor, commissioners of pilotage of the bay and harbor of Mobile, and in their capacity as such commissioners, complain against the steamboat called the Swan, of which George J. Blakeslee now is, or lately was master, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in the same; and thereupon, said commissioners claim in this action against said boat the sum of five hundred dollars, for violation of an act entitled "An act to provide for the registration of steamboat owners," approved February 15th, 1854, in this, to wit, (said complainants being the commissioners referred to in said act,) that the owners of the said steamboat, in violation of said act, did permit the said steamboat to be navigated on the Mobile or Alabama river, a river of this State indifferently known by both of said names, before the first day of March, 1855, without first having filed the certificate or statement as provided for by and required in the act aforesaid; and said steamboat left the port of Mobile after the first day of July, 1854, for the purpose of said navigation, and within thirty days last past; and a recovery is sought in this case—one-half to the use of said commissioners, and the other half to William S. Paine, he being the person who first informed said commissioners in the premises aforesaid.

Wherefore said commissioners pray that a writ of seizure may issue against the said steamboat, her tackle, apparel, and furniture, wheresoever the same may be found, if within the jurisdiction of this court, returnable to the first Monday of April, 1855; and that all persons having, or pretending to have any right, title, or interest in the said vessel, may be cited to appear and answer all and singular the matters herein set forth, and to abide the judgment and decree of the court in the premises; and that this honorable court will be pleased to decree that the said commissioners do recover, for the uses aforesaid, said several sums of money, making in all the sum of five hundred dollars in this behalf against the said boat, her tackle, apparel, and furniture; and may it please the court to grant such other and further relief in the premises as to law and justice may appertain, and also to condemn the said boat, her tackle, apparel, and furniture, and all persons intervening for their interest in the same, in costs.

WILLIAM S. PAYNE.

TAYLOR & HITCHCOCK,
Att'ys and Proctors.

THE STATE OF ALABAMA,
Mobile County.

Before me, Reuben A. Lewis, clerk of the city court of Mobile, personally appeared William S. Paine, who is personally known to me, and who being by me duly sworn, saith on oath, that the several allegations contained in the above complaint subscribed by him are true in substance and in fact.

In testimony whereof, I have hereto set my hand this the fifth day of March, 1855.

REUBEN A. LEWIS, *Clerk.*

I acknowledge myself the security of the complainants in the within stated cause, for the costs of the prosecution of said suit.

Witness my hand and seal, this fifth day of March, 1855.

GEORGE KEYSER.

Filed 5th March, 1855.

R. A. LEWIS, *Clerk.*

Writ of Seizure.

The State of Alabama to any Sheriff of the said State, greeting:

Whereas Henry O. Brewer, Gorham Davenport, Alexander W. Dearing, George Schaffelin and Joshua S. Secor, commissioners of pilotage of the bay and harbor of Mobile, in their capacity as such commissioners, have complained before me, Reuben A. Lewis, clerk of the city court of Mobile, in their petition filed this day in said court, against the steamboat called the Swan, her tackle, apparel and furniture, claiming the sum of five hundred dollars for a violation of an act entitled "An act to provide for the regis-

tration of the names of steamboat owners," approved February 15th, 1854; you are, therefore, hereby commanded to seize and take into your possession the said steamboat Swan, her tackle, apparel and furniture, wheresoever the same may be found, and hold her until released by due course of law.

Witness Reuben A. Lewis, clerk of the said city court of Mobile, this fifth day of March, 1855. Issued 5th day of March, 1855.

Attest: REUBEN A. LEWIS, *Clerk.*

Return.

Received March 5th, 1855, and on the 13th day of March, 1855, I seized and took into my possession the said boat, her tackle, apparel and furniture, and on the same day P. O. Foster and Roger A. Heirne gave bond for the said boat, which bond is herewith returned.

J. W. LANG, *Sh'ff M. C.*
By J. T. WEBB, *D. Sh'ff.*

Stipulators' Bond.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that we, P. O. Foster and Roger A. Heirne, are held and firmly bound unto H. O. Brewer, Gorham Davenport, Alex. W. Dearing, George Scheffelin and Joshua S. Secor, commissioners of pilotage for the bay and harbor of Mobile, in the just sum of five hundred dollars, for the faithful payment of which, we and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 9th day of March, in the year of our Lord one thousand eight hundred and fifty-five.

The condition of the above obligation is such, that whereas H. O. Brewer, Gorhan Davenport, Alex. W. Dearing, George Scheffelin and Joshua S. Secor, commissioners of pilotage of the bay and harbor of Mobile, have filed or caused to be filed in the city court of Mobile, process in the nature of a libel in admiralty against the steamboat called the Swan, of which Geo. J. Blakeslee is or was master, now lying in the port of Mobile, and James W. Lang, the sheriff of Mobile county, having attached and seized the said boat, her tackle, apparel and furniture, by virtue of a writ of seizure issued from the city court of Mobile aforesaid, on the 5th day of March, 1855, and made returnable to a term thereof, to be held on the first Monday of April, 1855:

Now, therefore, if the said above bounden, P. O. Foster and Roger A. Heirne, shall well and truly pay and satisfy such judgment as shall be rendered on said libel, then this obligation to be void, or else to be and remain in full force and virtue.

P. O. FOSTER, [SEAL.]
ROGER A. HEIRNE. [SEAL.]

Answer of Stipulators.

In the City Court of Mobile—In Admiralty.

HENRY O. BREWER, GORHAM DAVENPORT, Alexander W. Dearing, George Scheffelin and Joshua S. Secor, Commissioners of Pilotage of the bay and harbor of Mobile,

vs.

THE STEAMBOAT SWAN.

To the Honorable Alexander McKinstry, Judge of the City Court of Mobile:

The claim, answer and exceptions of Phineas O. Foster, Roger A. Heirne and George J. Blakeslee, intervening for their interest in the said steamboat Swan, her tackle, apparel and furniture, to the libel and complaint of Henry O. Brewer, Gorham Davenport, Alexander W. Dearing, George Scheffelin and Joshua S. Secor, as commissioners of pilotage of the bay and harbor of Mobile, against the said steamboat Swan, her tackle, apparel and furniture, shows and alleges as follows:

First. That they, the said Phineas O. Foster, Roger A. Heirne, and George J. Blakeslee, are the true and bona fide owners of the said steamboat Swan, her tackle, apparel, and furniture, and that no other person is the owner thereof.

Second. That they do not know and cannot answer whether the said libellants, and each and every one of them, are or are not the commissioners of pilotage of the bay and harbor of Mobile, and insist that they, the said libellants, be required to make due proof that they are such commissioners of pilotage.

Third. That the said libel is not sufficient in law to support the claim of the said libellants, in this, that the said libel does not allege or show who were or are the owners of the said steamboat; that it does not show or allege that the said steamboat left the port of Mobile after the first day of July, A. D. 1854, and before the filing of said libel; that it does not allege or show the facts necessary to show that the owners of said steamboat have incurred the forfeiture or subjected themselves to the penalty prescribed by the act of the legislature of the State of Alabama, mentioned and referred to in said libel; that the said act of the legislature of the State of Alabama is contrary to the constitution of the State of Alabama; that the said act of the legislature is contrary to the constitution and laws of the United States of America; that the penalty or forfeiture mentioned in said act of the legislature is a personal penalty or forfeiture which may be incurred by the owner or owners of any steamboat, who may fail to perform the duties prescribed by said act, and not a forfeiture of such steamboat itself, and cannot be recovered or enforced by a proceeding in admiralty

against such steamboat alone for its condemnation ; that said libel is equivocal and uncertain, in stating that said steamboat was run on one or the other of the two different rivers in the State of Alabama, to wit, the Alabama river or the Mobile river, without stating on which of them it was so run, and is in other respects uncertain and insufficient; that it does not show any case of which this court, as a court of admiralty, can take cognizance.

Fourth. That the said steamboat has never left the port of Mobile since the first day of July, 1854.

Fifth. That the said steamboat did not leave the port of Mobile within thirty days next preceding the filing of said libel.

Sixth. That the said steamboat is an American vessel of more than twenty tons burthen, and was built in the United States of America, and is and always has been wholly owned and commanded by citizens of the United States of America ; and the said steamboat, before the passage of the said act of the legislature of Alabama, to wit, on the 16th day of May, A. D. 1851, was duly enrolled and licensed in and at the custom-house of the United States of America at Mobile, in conformity to the act of Congress of the United States entitled " An act for enrolling and licensing ships and vessels to be employed in the coasting trade and fisheries, and for regulating the same ;" and has always been, from that time continued to be, and still is, so duly enrolled and licensed, as will be shown by the certificates thereof, to which, for greater certainty, the said claimants beg leave to refer, and which will be produced and proven as the court may direct ; and the said steamboat, since the first day of July, 1854, has never been used or navigated in or upon any other rivers or waters of the State of Alabama than tide-waters navigable from the sea and constituting part of the coast of the United States of America ; and so they say that the said steamboat is not, and they as owners of said steamboat are not, liable to any penalty or forfeiture prescribed by the said act of the legislature of the State of Alabama.

Seventh. That the port of Mobile, before and at the time of the passage of the act of the legislature of Alabama, was and is a port of entry of the United States of America, and was and still is resorted to and frequented by ships and vessels of different sizes and tonnage engaged in the trade and commerce of the United States of America with foreign nations and among the several States, for the purposes of such trade and commerce ; that ships and vessels of small size and tonnage, so engaged in such trade and commerce, were and are accustomed to come up to the wharves of the city of Mobile, within the port of Mobile, and where the tide ebbs and flows, for the purpose of discharging their cargoes in carrying on such trade and commerce, and other ships and vessels, of larger size and tonnage, so engaged in such trade and commerce, and so resorting to and frequenting said port for the purposes aforesaid,

cannot come up to the wharves of said city on account of the shallowness of the water in some parts of the bay of Mobile below said city, and necessarily have long been and are now compelled and accustomed to anchor in the lower parts of said bay and to discharge and receive their cargoes, for the purpose of carrying on such trade and commerce, by the means and use of lighters employed to carry the cargoes of ships and vessels from such ships and vessels to the wharves of said city, and from the wharves of said city to such ships and vessels; and it has long been and is necessary and customary that ships and vessels resorting to and frequenting the said port should be towed in said port and bay, and in entering and leaving said port, by steam tow-boats; that the said steamboat Swan, so being an American vessel as aforesaid, duly enrolled and licensed as aforesaid, before the passage of the said act of the legislature of Alabama, was, and ever since that time has been, and is now, used and employed wholly and exclusively as a lighter and steam tow-boat as aforesaid within the port of Mobile, and upon tide-waters, and has never since the first day of July, A. D. 1854, been used, run, or navigated in any river or waters of the State of Alabama.

Eighth. That all and singular the premises are true, and the said claimants pray the court to order the said steamboat to be delivered to them, and to pronounce against said libellants for costs, &c.

P. O. FOSTER.

JONES & ARMISTEAD,
Proctors of Clients.

Subscribed and sworn to before me this 27th March, 1855.

R. A. LEWIS, *Clerk.*

Filed 27th March, 1855.

R. A. LEWIS, *Cl'k.*

And on the 17th day of November, 1856, being a day of the said city court of Mobile, the following judgment and decree was rendered, to wit:

GORHAM DAVENPORT, H. O. BREWER, J. S. Secor, George Scheffelin and A. W. Dearing, Commissioners of Pilotage of the bay and harbor of Mobile,
vs.
STEAMER SWAN, P. O. FOSTER, & ROGER A. Heirne, George J. Blakeslee, Stipulators.

This cause coming on to be heard on regular call, and both parties appearing by counsel, the case was submitted to the court on final decree, on the facts and the pleadings agreed upon in open

court, to wit: In this case, it is agreed by the parties that the allegations in the claimants' answer are admitted to be true, except the denial that said steamboat has left the port of Mobile within thirty days preceding the filing of the libel, and that question is to be submitted to the court as a mixed question of law and fact, reserving to either party the liberty of appealing from the decision of the court, either as to the law or facts, or both. It is further admitted on that question, that the steamboat has been solely employed as a lighter and steam tow-boat, as alleged in the answer; that in prosecuting such business, said boat has come up to the wharves of the city from the vessels anchored in the lower part of the bay, and returned from the wharves to such ships; that, in so doing, said boat has sometimes come up or gone down the channel commonly known as Spanish river; that said river is a channel which vessels are accustomed to come up to the wharves of the city; that it is considered, and spoken of generally by the port wardens and pilots, as part of the port of Mobile, and coming within their jurisdiction or authority as such, and that it and the whole bay of Mobile is generally considered as part of the port of Mobile. In said navigation said vessels also navigate the river Mobile in front of the city of Mobile; that the Mobile river in front of the city, and also Spanish river, are within the corporate limits, and the lower bay of Mobile is beyond the corporate limits of said city; that said boat in said navigation sometimes tows vessels beyond the outer bar of the bay, and into the gulf the *the* extent of two or three miles, but has not done so within thirty days next preceeding the filing of the libel. It is also admitted that there are other vessels than steamboats, to wit, vessels propelled by sails, of large size and tonnage, that are also engaged in the trade and business of lighters between the wharves of the city of Mobile and the vessels and ships in the lower part of the bay as aforesaid, in the same manner as the steamboats are; that said vessel was engaged in carrying on her business within thirty days last past; and the same having been duly considered by the court, the court is unable to distinguish any difference between this case and that of the same plaintiffs against the J. H. Bell et al., lately decided by the Supreme Court, and this court is, therefore, of opinion that defendants are guilty, and that the libellants are entitled to recover; but the court is of opinion that the libellants are entitled to but one forfeiture, to wit, the sum of five hundred dollars. It is therefore ordered, adjudged and decreed that the said libellants have and recover of the said P. O. Foster, Roger A. Heirne, and George J. Blakeslee, stipulators, the said sum of five hundred dollars, together with the costs in this behalf expended.

Certificate of Appeal.

I, Reuben A. Lewis, clerk of the city court of Mobile, do hereby

certify that on the day of December, 1856, Phineas O. Foster applied for and obtained from my office an appeal, returnable to the January term, 1857, of the supreme court of Alabama, to supersede and reverse the judgment heretofore set forth, the said P. O. Foster having given bond according to law, with Charles P. Gage as security; a copy of which bond is hereto attached as a part of this transcript.

Attest: REUBEN A. LEWIS, *Clerk.*

Appeal Bond.

THE STATE OF ALABAMA,
Mobile County.

Know all men by these presents, that we, P. O. Foster and Charles P. Gage, are held and firmly bound unto G. Davenport, H. O. Brewer, J. S. Secor, George Scheffelin, and A. W. Dearing, commissioners of pilotage of the bay and harbor of Mobile, in the sum of one thousand dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals, and dated this 16th day of December, A. D. 1856.

The condition of the above obligation is such, that whereas the above bounden P. O. Foster has this day applied for and obtained an appeal, returnable to the January term, 1857, of the supreme court of Alabama, to supersede and reverse a judgment recovered by the said Davenport, Brewer, Secor, Scheffelin, and Dearing, commissioners of pilotage of the bay and harbor of Mobile, against P. O. Foster and R. A. Heirne, stipulators of the steamer Swan, at the November term, 1856, of the city court of Mobile for Mobile county, for five hundred dollars, besides costs:

Now, if the said P. O. Foster shall prosecute to effect his said suit in the supreme court of the State of Alabama, and shall pay and satisfy such judgment as the supreme court shall render in the premises, then this obligation to be null and void; otherwise to be and remain in full force and effect.

P. O. FOSTER, [SEAL.]
CHA'S P. GAGE. [SEAL.]

Approved.

R. A. LEWIS, *Cl'k.*

Citation.

The State of Alabama, Mobile county, to the Sheriff of Mobile county, greeting:

Whereas at a term of the city court of Mobile for Mobile county, held on the third Monday of November, 1856, in a certain cause in said court, wherein G. Davenport, H. O. Brewer, J. S. Secor, George Scheffelin, and A. W. Dearing, commissioners of pilotage of the bay and harbor of Mobile, are plaintiffs, and P. O. Foster

and R. A. Heirne are defendants, a judgment was rendered against said defendants for the sum of five hundred dollars, to reverse which the said defendants have on this day applied for and obtained from this office an appeal, returnable to the next term of our supreme court of the State of Alabama, to be held at Montgomery on the first Monday of January next, the necessary bond having been given by the said Foster and Heirne, with Charles P. Gage as security:

Now you are therefore hereby commanded, without delay, to cite the said Davenport, Brewer, Secor, Scheffelin, and A. W. Dearing, commissioners of pilotage of the bay and harbor of Mobile, or their attorneys, Taylor and Hitchcock, to appear at the next term of said supreme court, to defend against the said writ of appeal if they think proper.

Witness Reuben A. Lewis, clerk of the said city court of Mobile, this 16th day of December, 1856. Issued 16th Dec'r, 1856.

Attest: REUBEN A. LEWIS, *Clerk.*

Sheriff's Return.

Received December 18th, 1856, and on the 19th December, 1856, I served a copy of the within citation on John T. Taylor.

W. P. CLEAVELAND, *Shff. M. C.*
By G. M. BREWER, *D. S.*

Certificate.

THE STATE OF ALABAMA,
Mobile County.

I, Reuben A. Lewis, clerk of the city court of Mobile, for the county and State aforesaid, do dereby certify the foregoing to be a full and complete transcript of all the proceedings had in the said entitled case, as the same remains of file in said court.

In testimony whereof I have hereunto set my hand and affixed [SEAL.] the seal of said court, this 22d day of January, A. D. 1857.

Attest: REUBEN A. LEWIS, *Clerk.*

Be it also remembered, that on a day subsequent to the filing of the foregoing, the following errors were assigned, to wit:

Supreme Court of Alabama—January Term, 1857.

The appellants come, and assign the following errors:

1st. The court erred in rendering the decree shown in the record.

2d. On the pleadings and facts agreed the court erred in not rendering a decree dismissing the libel and complaint.

WM. G. JONES, *for Appellants.*

And afterwards, to wit, on the fifth day of June, A. D. 1857,

being a day of the June term of said supreme court, the following judgment was rendered, to wit:

STEAMBOAT "SWAN," PHINEAS O. FOSTER, Roger A. Heirne, Geo. J. Blakesly, Stipulators, vs. G. DAVENPORT et als., Commissioners of Pilotage, &c.	1 Div., 3,060.

Came the parties by their attorneys, and the record and the matters assigned for error therein being argued and examined, it seems to the court that in the record and proceedings of said city court of Mobile there is no error.

It is, therefore, considered by the court that the judgment of said city court be in all things affirmed, and that said appellees recover of said appellants, and of Charles P. Gage, surety, the amount of said judgment of said city court, ten per cent. damages thereon and interest, together with the costs of this court and of said city court.

Writ of Error.

UNITED STATES OF AMERICA.

The President of the United States of America, to the Judges of the Supreme Court of the State of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said supreme court of the State of Alabama before you, between Phineas O. Foster, Roger A. Heirne, and George J. Blakeslee, owners of the steamboat "Swan," on the one side, and Gorham Davenport, Henry O. Brewer, George Scheffelin, Joshua S. Secor, and A. W. Dearing, commissioners of pilotage of the bay and harbor of Mobile, on the other, a manifest error hath happened, to the great damage of the said Phineas O. Foster, Roger A. Heirne, and George J. Blakeslee, owners of the steamboat Swan, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the 81st year.

[SEAL.]

Attest:

GEO. E. HOLT,
Clerk C. C. Sou. Dis. Ala.

Filed September 17th, 1857.

JNO. D. PHELAN, *Clerk.*

Bond.

Supreme Court of the United States.

PHINEAS O. FOSTER, ROGER A. HEIRNE, & George J. Blakeslee, owners of steamer Swan,

vs.

GORHAM DAVENPORT, H. O. BREWER, George Scheffelin, J. S. Secor, and A. W. Dearing, Commissioners of Pilotage of the bay and harbor of Mobile.

} In Error.

Know all men by these presents that we, Phineas O. Foster, Roger A. Heirne, and Geo. J. Blakeslee, (owners of the steamer Swan,) and Charles P. Gage, are held and firmly bound unto the above named Gorham Davenport, Henry O. Brewer, George Scheffelin, Joshua S. Secor, and A. W. Dearing, commissioners of pilotage of the bay and harbor of Mobile, in the sum of one thousand dollars, to be paid to the said commissioners of pilotage, or their successors in office, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of August, A. D. 1857.

Whereas the above named Phineas O. Foster, Roger A. Heirne, and George J. Blakeslee, owners of the steamer Swan, have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the supreme court of the State of Alabama, in the above entitled cause: Now, therefore, the condition of this obligation is such, that if the above named Phineas O. Foster, Roger A. Heirne and George J. Blakeslee, (the defendants,) and now plaintiffs in the said writ of error above mentioned, shall prosecute their said writ of error to effect, and answer all damages and cost if they shall fail to make good their plea, then this obligation

to be void, but otherwise the same shall be and remain in full force and virtue.

P. O. FOSTER. [SEAL.]
R. A. HEIRNE. [SEAL.]
G. J. BLAKESLEE. [SEAL.]
CHAS. P. GAGE. [SEAL.]

Witness: GEO. W. MILLER,
Dep. Cl'k C. C. Sou. Dis. Ala.

Approved by Samuel F. Rice, chief justice of the supreme court of Alabama.

Filed Sep. 17th, 1857.

JNO. D. PHELAN, *Cl'k.*

Citation.

Unitited States of America to Gorham Davenport, Henry O. Brewer, George Scheffelin, Joshua S. Secor, and A. W. Dearing, Commissioners of Pilotage of the bay and harbor of Mobile, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December, eighteen hundred and fifty-seven, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein Phineas O. Foster, Roger Heirne, and George J. Blakeslee, (owners of the steamer Swan,) are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Rice, chief justice of said supreme court of the State of Alabama, this 27th day of August, in the year of our Lord eighteen hundred and fifty-seven.

SAM'L F. RICE,
Chief Justice Supreme Court of Alabama.

Return.

Rec'd Sep. 28th, and executed October 7th, 1857, by serving Davenport, Scheffelin, Secor, and Dearing, each with a copy of this citation. H. O. Brewer not found in my district.

C. M. GODBOLD, *U. S. M.*
By W. H. GASQUE, *D. M.*

THE STATE OF ALABAMA,
Montgomery County.

I, John D. Phelan, clerk of the supreme court of the State of Alabama, do hereby certify that the foregoing pages, from one to fifteen inclusive, contain a full, true, and correct transcript of the

record in the case therein named, from the city court of Mobile, as the same appears on file in my office, and of the judgment of the supreme court rendered thereon, and of the writ of error, bond and citation, with return thereto, as the same remain of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of the court, this 30th day of November, A. D. 1857.

[SEAL.]

Attest:

JNO. D. PHELAN,
Cl'k Sup. Co. of Ala.

Transcript $20 00.

Filed 18 Feb'y, 1858.